



INDUSTRY CIRCULAR

**DEPARTMENT OF
THE TREASURY**

Bureau of Alcohol, Tobacco and Firearms

Washington, D.C. 20226

Number: 84-1

Date: January 23, 1984

LATE FILED EXCISE TAX RETURNS

Proprietors of Distilled Spirits Plants, Bonded Wine Cellars, Brewers, Tobacco Product Manufacturers and others concerned:

PURPOSE: The purpose of this circular is to reemphasize to all persons who pay excise tax that penalties and interest are incurred for any returns which are filed late.

BACKGROUND: In Industry Circular 81-10, the Bureau pointed out that there had been a substantial increase in the number of excise tax returns filed late, as evidenced by the number of offers in compromise of penalties incurred for late filing. This circular points out that penalties for such violations may be compromised only where there is "reasonable cause" for the late filing, and that the burden of proving "reasonable cause" is on the taxpayer.

Despite the advice given to the taxpayers in Industry Circular 81-10 the number of excise tax returns filed late has continued to increase. Some of the offers in compromise of penalties for late filing violations have been accepted in amounts as small as one-half of one percent of the delinquent taxes. This has been fairly equitable for compromising the small number of late filings in the past, where unusual circumstances resulted in the delay. However, the recent increase in late filings indicates a degree of carelessness on the part of taxpayers.

TEXT: The penalties for failing to file a tax return on the date prescribed are set forth under 26 CFR 301.6651-1 (a)(1). The amount to be added to the tax is 5 percent thereof if the failure is for not more than one month, with an additional 5 percent for each additional month or fraction thereof during which the failure continues, but not to exceed 25 percent in aggregate. If the tax return is filed even one day late, the taxpayer is liable for an additional 5 percent of the tax.

Pursuant to 26 CFR 601.327, a compromise of the penalty is justified where there is either doubt as to liability or doubt as to ability to pay. The tax and interest will be collected without compromise. In the overwhelming majority of late filings, a compromise of the penalties is considered on the basis of doubt as to liability. This doubt usually results from a bona fide dispute as to whether the reason for the late filing is the result of "reasonable cause." The Bureau's standard for "reasonable cause" focuses on whether the taxpayer exercised "ordinary business care and prudence," as called for under 26 CFR 301.6651-1(c)(1). Where there is no reasonable cause, and the late filing is due to willful neglect, there is no room for compromise. If, however, there is reasonable cause and no willful neglect, there is no basis for assessment.

The amount of an offer in compromise of penalties is determined by evaluating the taxpayers' explanation for the late filing in light of the facts of the case. The Bureau does not recognize employee neglect or oversight as a reasonable cause for a company's late filing. Absence of the employee responsible for preparing or filing the tax return would also be insufficient to establish reasonable cause for a late filing. Proprietors are expected to train back-up personnel to prepare and file excise tax returns so that the absence of one employee will never result in the late filing of a return. See Industry Circular 81-10 for further examples of what constitutes "reasonable cause." The responsibility of showing all facts alleged as a reasonable cause is with the taxpayer who wishes to avoid the addition to the tax. The taxpayer's past history of late filing and corrective measures taken to prevent future occurrences are considered in the determination of the amount of the offer in compromise.

The Bureau is reemphasizing that if the taxpayer files a return even one day late, the Government will assess late-filing penalties unless the taxpayer can prove there was reasonable cause for the late filing. If the Bureau finds that the taxpayer's lack of business care and prudence rise to the level of willful neglect, the offer in compromise will not be accepted.

-3-

INQUIRIES: Inquiries concerning this circular should refer to its number and be addressed to the Assistant Director, Regulatory Enforcement, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, N.W., Washington, DC 20226.

W. T. Duke
Acting
Director